

1
2 UNITED STATES DISTRICT COURT
3 CENTRAL DISTRICT OF CALIFORNIA
4 SOUTHERN DIVISION

5
6 VINH NGUYEN, INDIVIDUALLY
7 AND ON BEHALF OF ALL OTHERS
8 SIMILARLY SITUATED,

9
10 Plaintiff,

11 v.

12 RADIENT PHARMACEUTICALS
13 CORPORATION AND DOUGLAS C.
14 MACLELLAN,

15 Defendants.

16 CASE No.:CV-11-0406-DOC
17 (MLGx)

18 CLASS ACTION

19 **STIPULATION AND
20 AGREEMENT OF SETTLEMENT**

21 Hon. David O. Carter

1 **STIPULATION AND AGREEMENT OF SETTLEMENT**

2 This Stipulation and Agreement of Settlement (the "Stipulation") dated
3 December 16, 2013 is hereby submitted to the Court pursuant to Rule 23 of the
4 Federal Rules of Civil Procedure. Subject to the approval of the Court, this
5 Stipulation is entered into among Lead Plaintiffs Reydel Quintana and Dat Tan
6 Tran (collectively, the "Lead Plaintiffs"), on behalf of themselves and the
7 putative class (collectively, "Plaintiffs"); and Radient Pharmaceuticals
8 Corporation ("Radient"), and Douglas C. MacLellan ("MacLellan") (collectively,
9 the "Radient Defendants", or the "Settling Defendants"), by and through their
10 respective counsel.

11 1. WHEREAS, a class action complaint styled *Vinh Nguyen v. Radient*
12 *Pharmaceuticals, et al.*, No. CV-11-0406-DOC (MLGx) alleging violations of
13 federal securities laws against the Radient Defendants and Akio Ariura
14 ("Ariura") was filed in the United States District Court for the Central District of
15 California (the "Court");

16 2. WHEREAS, by Order dated June 6, 2011, Judge Carter appointed,
17 among others, Reydel Quintana and Dat Tan Tran as Lead Plaintiffs ("Lead
18 Plaintiffs");

19 3. WHEREAS, on July 8, 2011, Lead Plaintiffs filed the operative
20 Amended Complaint alleging: (Count 1) violations of Section 10(b) of the
21 Securities Exchange Act of 1934 (the "Exchange Act") against the Settling
22 Defendants and Defendant Ariura; and (Count 2) violations of Section 20(a) of
23 the Exchange Act against Defendants MacLellan and Ariura (together, the
24 "Individual Defendants");

25 4. WHEREAS, by order dated October 20, 2011, Judge Carter denied
26 Defendant Radient's Motion to Dismiss the Amended Complaint;

1 5. WHEREAS, by order dated October 26, 2011, Judge Carter granted
2 in part and denied in part Individual Defendants' Motion to Dismiss that they had
3 previously filed. Judge Carter granted dismissal as to Plaintiffs' Section 10(b)
4 and Rule 10b-5 claim with respect to Defendant Ariura, but denied dismissal as
5 to Plaintiffs' other claims against the Individual Defendants;

6 6. WHEREAS, on March 23, 2012, Lead Plaintiffs moved to certify a
7 class of persons who purchased Radient shares between January 18, 2011 and
8 March 4, 2011 (the "Class") and to appoint themselves as representatives of the
9 Class (the "Motion for Class Certification");

10 7. WHEREAS, by order dated November 26, 2012, Judge Carter
11 granted the Lead Plaintiff's Motion for Class Certification;

12 8. WHEREAS, on April 1, 2013, Defendant Radient and the Individual
13 Defendants filed their Motions for Summary Judgment;

14 9. WHEREAS, by order dated May 17, 2013, Judge Carter granted
15 Defendant Ariura's Motion for Summary Judgment but otherwise denied
16 Defendants Radient and MacLellan's motions;

17 10. WHEREAS, in recognition of the attendant risks and costs of
18 continued litigation and the benefits of resolving this litigation, the parties hereto
19 desire to settle and resolve any and all actual or potential claims by, between, or
20 among Plaintiffs, on the one hand, and the Settling Defendants, on the other
21 hand, arising out of or relating to the subject matter of this action (the
22 "Litigation"), which includes but is not limited to the following allegations by
23 Plaintiffs:

- 24 • The claim that Radient intentionally misled investors to believe that
25 it was conducting a clinical trial for Onko-Sure with the Mayo
26 Clinic; and

- 1 ● The claim that Radient failed to disclose that the Mayo Clinic's sole
2 relationship was for a subsidiary to sell blood samples that Radient
3 might use in its clinical study.

4 The Settling Defendants deny any wrongdoing whatsoever, and this Stipulation
5 shall in no event be construed as, or be deemed to be evidence of, an admission
6 or concession on the part of any Settling Defendant with respect to any actual or
7 potential claim, liability, wrongdoing, or damage whatsoever, or any infirmity in
8 the defenses that the Settling Defendants have asserted. This Stipulation also
9 shall not be construed as or be deemed to be a concession by the Lead Plaintiffs
10 of any infirmity in the claims asserted in the Litigation. The parties to this
11 Stipulation (the "Settling Parties") wish to settle and compromise any dispute
12 regarding the Litigation or its subject matter, including but not limited to whether
13 the Litigation was filed by the Lead Plaintiffs and defended by the Settling
14 Defendants in good faith and with adequate basis in fact under Rule 11 of the
15 Federal Rules of Civil Procedure. The Settling Parties agree that the Litigation is
16 being voluntarily settled after advice of counsel and that the terms of the
17 Settlement are fair, adequate, and reasonable;

18 11. WHEREAS, Lead Plaintiffs' Counsel has conducted an investigation
19 relating to the claims and the underlying events and transactions alleged in the
20 Litigation. Lead Plaintiffs' Counsel has analyzed the facts and the applicable law
21 with respect to the claims of the Lead Plaintiffs against Defendants and the
22 potential defenses thereto, which in the Lead Plaintiffs' judgment have provided
23 an adequate and satisfactory basis for the evaluation of an agreement to settle, as
24 described herein;

25 12. WHEREAS, Lead Plaintiffs' Counsel and counsel for the Settling
26 Defendants participated in a full-day mediation conference with The Honorable
27 Leo Papas (Ret.). At and following the mediation, the participants engaged in

1 extensive arm's-length negotiations with each other, such negotiations bearing
2 fruit in this Stipulation;

3 13. WHEREAS, based upon the investigation conducted by Lead
4 Plaintiffs' Counsel, Lead Plaintiffs' Counsel has concluded that the terms and
5 conditions of this Stipulation are fair, reasonable, and adequate to Plaintiffs, and
6 in their best interests, and Lead Plaintiffs have agreed to settle the claims asserted
7 in the Litigation pursuant to the terms and conditions of this Stipulation, after
8 considering: (a) the substantial benefits that Plaintiffs will receive from
9 settlement of the Litigation; (b) the attendant risks of litigation; and (c) the
10 desirability of permitting the Settlement to be consummated as provided by the
11 terms of this Stipulation;

12 14. NOW THEREFORE, without any admission or concession on the
13 part of the Lead Plaintiffs of any lack of merit in the Litigation whatsoever, and
14 without any admission or concession on the part of the Settling Defendants of
15 any liability, wrongdoing, or lack of merit in the defenses asserted in the
16 Litigation whatsoever, it is hereby STIPULATED AND AGREED, by and
17 among the Settling Parties, through their respective attorneys, subject to approval
18 of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in
19 consideration of the benefits flowing to the Settling Parties hereto from the
20 Settlement, that any and all claims made, or that could have been made, including
21 all Settled Claims (as defined below), by Plaintiffs against the Released Parties
22 (as defined below) shall be compromised, settled, released, and dismissed with
23 prejudice as provided in this Stipulation and Agreement of Settlement, to the
24 extent as hereafter provided, without costs as to Plaintiffs or Defendants, subject
25 to the approval of the Court, upon and subject to the following terms and
26 conditions:

27 **A. CERTAIN DEFINITIONS**

1 As used in this Stipulation, the following terms have the meanings specified
2 below:

3 1. "Attorneys' Fees and Expenses" means the portion of the Gross
4 Settlement Fund approved by the Court for payment to Lead Plaintiffs' Counsel,
5 including attorneys' fees, costs, litigation expenses, and fees and expenses of
6 experts (excluding Notice and Administration Expenses).

7 2. "Authorized Claimant" means any Claimant (as defined below)
8 whose claim for recovery has been allowed pursuant to the terms of the
9 Stipulation or by order of the Court.

10 3. "Award to Lead Plaintiffs" means any award by the Court to Lead
11 Plaintiffs of reasonable costs and expenses (including lost wages) directly
12 relating to the representation of the Settlement Class pursuant to 15 U.S.C. § 78u-
13 4(a)(4).

14 4. "Claimant" means any Settlement Class Member who files a Proof
15 of Claim and Release (as defined below) in such form and manner, and within
16 such time, as set forth in this Stipulation, or as the Court shall prescribe.

17 5. "Claims Administrator" means the accounting and claims
18 administration firm, Strategic Claims Services, Inc., that Lead Plaintiffs' Counsel
19 requests be appointed by the Court to administer the Settlement and disseminate
20 notice to the Settlement Class.

21 6. "Court" means the United States District Court for the Central
22 District of California District.

23 7. "Defendants" means Radient Pharmaceuticals Corporation, Douglas
24 C. MacLellan, and Akio Ariura.

25 8. "Effective Date" means the date on which all of the conditions set
26 forth below in paragraph K.1. shall have been satisfied and the Court's Order and
27 Final Judgment, substantially in the form of Exhibit B hereto, becomes "Final."

1 The Court's Order and Final Judgment shall be deemed to be "Final" when either
2 of the following has occurred: (a) if an appeal or review is not sought by any
3 person from the Order and Final Judgment, the day following the expiration of
4 the time to appeal or petition from the Order and Final Judgment; or (b) if an
5 appeal or review is sought from the Order and Final Judgment, the day after such
6 Order and Final Judgment is affirmed or the appeal or review is dismissed or
7 denied and such Order and Final Judgment is no longer subject to further judicial
8 review.

9 9. "Escrow Account" means the interest-bearing account selected by
10 the Escrow Agent. The Escrow Account shall be managed by the Escrow Agent
11 for the benefit of Lead Plaintiffs and the Settlement Class until the Effective Date
12 of the Settlement.

13 10. "Escrow Agent" means the Claims Administrator or its duly
14 appointed agent(s). The Escrow Agent shall perform the duties as set forth in this
15 Stipulation.

16 11. "Gross Settlement Fund" means the Settlement Amount plus all
17 interest earned thereon.

18 12. "Lead Plaintiffs" means Reydel Quintana, Agnes Cho and Dat Tan
19 Tran.

20 13. "Lead Plaintiffs' Counsel" means The Rosen Law Firm, P.A.

21 14. "Net Settlement Fund" means the Gross Settlement Fund, less: (i)
22 Attorneys' Fees and Expenses; (ii) Notice and Administration Expenses; (iii)
23 taxes; (iv) any Award to Lead Plaintiffs; and (v) other fees and expenses
24 authorized by the Court.

25 15. "Notice and Administration Account" means the portion of the
26 Gross Settlement Fund and maintained by Lead Plaintiffs' Counsel. The Notice
27 and Administration Account may be drawn upon by Lead Plaintiffs' Counsel for

1 Notice and Administration Expenses without further order of the Court. The
2 Notice and Administration Account is not required to be in an account separate of
3 the Escrow Account.

4 16. "Notice and Administration Expenses" means all expenses incurred
5 (whether or not paid) in connection with the preparation, printing, mailing, and
6 publication of the Notice to the Settlement Class of the proposed settlement, and
7 all expenses of Settlement administration; provided, however, that none of these
8 expenses shall be deemed to include Attorneys' Fees and Expenses through the
9 Effective Date. All such Notice and Administration Expenses shall be paid from
10 the Gross Settlement Fund.

11 17. "Order and Final Judgment" means the order and judgment entered
12 by the Court, including a Bar Order, approving the Settlement and dismissing the
13 Litigation as against the Settling Defendants with prejudice and without costs to
14 any party.

15 18. "Radient Defendants" means all Defendants.

16 19. "Person" means any individual, corporation, partnership, limited
17 liability company or partnership, limited partnership, professional corporation,
18 association, affiliate, joint stock company, trust, estate, unincorporated
19 association, government, or any political subdivision or agency thereof, any other
20 type of legal or political entity, any legal representative, and, as applicable, their
21 respective spouses, heirs, predecessors, successors, representatives, and assigns.

22 20. "Plaintiffs" means the Lead Plaintiffs and the Settlement Class.

23 21. "Plan of Allocation" means the plan for allocating the Net
24 Settlement Fund (as set forth in the Notice of Pendency and Settlement of Class
25 Action (the "Notice"), attached as Exhibit A-1 to the Order of Preliminary
26 Approval of Settlement) to Authorized Claimants after payment of Notice and
27 Administration Expenses, Taxes and Tax Expenses, and Attorneys' Fees and

1 Expenses. Any Plan of Allocation is not part of the Stipulation and the Released
2 Parties shall have no liability with respect thereto.

3 22. "Released Parties" means Radient Defendants, including Akio
4 Ariura and any of their current, former, or future parents, subsidiaries, affiliates,
5 partners, joint venturers, officers, directors, principals, shareholders, members,
6 agents (acting in their capacity as agents), employees, attorneys, trustees, insurers
7 (including American International Group, Inc. and its respective businesses,
8 affiliates, subsidiaries, parents and affiliated corporations, divisions,
9 predecessors, shareholders, partners, joint venturers, principals, insurers,
10 reinsurers, successors and assigns, and their respective past, present and future
11 employees, officers, directors, attorneys, agents and representatives), reinsurers,
12 advisors, accountants, associates, and/or any other individual or entity in which
13 any Radient Defendant has or had a controlling interest or which is or was related
14 to or affiliated with any Radient Defendant, and the current, former, and future
15 legal representatives, heirs, successors-in-interest, or assigns of any Radient
16 Defendant.

17 23. "Settled Claims" means any and all claims, debts, demands,
18 liabilities, rights, and causes of action of every nature and description whatsoever
19 (including, but not limited to, any claims for damages, interest, attorneys' fees,
20 expert or consulting fees, and any other costs, expenses, or liabilities
21 whatsoever), whether based on federal, state, local, statutory or common law, or
22 any other law, rule, or regulation, whether fixed or contingent, accrued or
23 unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured,
24 whether class or individual in nature, including both known claims and Unknown
25 Claims (as defined below): (i) that have been asserted in the Litigation by the
26 Lead Plaintiffs and/or Settlement Class Members or any of them against any of
27 the Released Parties, including, without limitation, all statements made by any of
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1 the Radient Defendants that Plaintiffs allege in the Litigation were false or
2 misleading, or any of the alleged acts, omissions, representations, facts, events,
3 matters, transactions, or occurrences asserted in or relating to the Litigation, or
4 otherwise alleged, asserted, or contended in the Litigation; or (ii) that relate to the
5 purchase of Radient securities, including, without limitation, claims for fraud,
6 negligent misrepresentation, or claims based upon or related in any way to the
7 purchase, acquisition, or sale of Radient securities during the Class Period by the
8 Lead Plaintiffs or any Settlement Class Member, on behalf of themselves, their
9 heirs, executors, administrators, successors, and assigns against the Released
10 Parties or any of them. Settled Claims also include any and all claims arising out
11 of, relating to, or in connection with the Settlement or resolution of the Litigation
12 against the Released Parties (including Unknown Claims that arise out of, relate
13 to, or are in connection with the Settlement or resolution of the Litigation against
14 the Released Parties), except claims to enforce any of the terms of this
15 Stipulation.

16 24. "Settled Defendants' Claims" means all claims, demands, rights,
17 remedies, liabilities, and causes of action of every nature and description
18 whatsoever, whether based on federal, state, local, statutory, or common law, or
19 any other law, rule, or regulation, including both known and Unknown Claims,
20 that (i) have been or could have been asserted in the Litigation by the Settling
21 Defendants, or any of them, or the successors and assigns of any of them, against
22 any of the Lead Plaintiffs, Settlement Class Members, or any of their attorneys,
23 and (ii) arise out of or relate in any way to the institution, prosecution, or
24 Settlement of this Litigation or the Settled Claims, including but not limited to all
25 claims for malicious prosecution or sanctions. "Settled Defendants' Claims" does
26 not include claims to enforce any of the terms of this Stipulation.

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1 25. "Settlement Class" and "Settlement Class Members" mean, for
2 purposes of this Settlement, all persons who purchased or otherwise acquired any
3 common stock of Radient during the period from January 18, 2011 through and
4 including March 4, 2011, and were allegedly damaged thereby. Excluded from
5 the Settlement Class are Defendants, the present and former officers and directors
6 of Radient and any subsidiary thereof, members of their immediate families and
7 their legal representatives, heirs, successors or assigns and any entity in which
8 any defendant or excluded person has or had a controlling interest. Also
9 excluded from the Settlement Class are those persons who file valid and timely
10 requests for exclusion in accordance with the Court's Order of Preliminary
11 Approval of Settlement ("Preliminary Approval Order") concerning this
12 Stipulation.

13 26. "Settlement Class Distribution Order" means the order entered by
14 the Court, upon application of Lead Plaintiffs' Counsel following the occurrence
15 of the events identified in paragraph D.13. below, which authorizes the Claims
16 Administrator to distribute the Net Settlement Fund to the Settlement Class.

17 27. "Settlement Class Period" means the period from January 18, 2011,
18 and March 4, 2011, inclusive.

19 28. "Settlement" means the settlement contemplated by this Stipulation.

20 29. "Settlement Amount" means a fund in the amount of \$2,500,000.00
21 (Two Million Five Hundred Thousand Dollars).

22 30. "Settlement Hearing" means the final hearing to be held by the Court
23 to determine: (1) whether the proposed Settlement should be approved as fair,
24 reasonable, and adequate; (2) whether all Settled Claims should be dismissed
25 with prejudice; (3) whether an order approving the Settlement should be entered
26 thereon; (4) whether the allocation of the Settlement Fund should be approved;

1 and (5) whether the application for an award of Attorneys' Fees and Expenses and
2 an Award to Lead Plaintiffs should be approved.

3 31. "Unknown Claims" means (a) any Settled Claim that the Lead
4 Plaintiffs or any Settlement Class Member does not know or suspect to exist in
5 his, her, or its favor at the time of the release of the Released Parties, which if
6 known by him, her, or it, might have affected his, her, or its decision(s) with
7 respect to the Settlement, including, but not limited to, the decision not to object
8 to the Settlement, provided such claim arises out of or relates to the purchase or
9 sale of Radient securities, and (b) any Settled Defendants' Claims that any
10 Defendant does not know or expect to exist in his, her, or its favor, which if
11 known by him, her, or it might have affected his, her, or its decision(s) with
12 respect to the Settlement. With respect to any and all Settled Claims and Settled
13 Defendants' Claims, the Settling Parties stipulate and agree that upon the
14 Effective Date, the Settling Parties shall expressly waive, and each of the
15 Settlement Class Members shall be deemed to have waived and by operation of
16 the Order and Final Judgment shall have waived, any and all provisions, rights,
17 and benefits conferred by any law of any state or territory of the United States, or
18 principle of common law that is similar, comparable, or equivalent to Cal. Civ.
19 Code § 1542, which provides: "A general release does not extend to claims which
20 the creditor does not know or suspect to exist in his or her favor at the time of
21 executing the release, which if known by him or her must have materially
22 affected his or her settlement with the debtor."

23 **B. SCOPE AND EFFECT OF SETTLEMENT AND RELEASES**

24 1. The obligations incurred pursuant to this Stipulation shall be in full
25 and final disposition of the Litigation and any and all Settled Claims as against all
26 Released Parties and any and all Settled Defendants' Claims as against the Lead
27 Plaintiffs, the Settlement Class Members, and their attorneys.

1 2. Pursuant to the Order and Final Judgment, upon the Effective Date
2 of this Settlement, the Settlement Class Members on behalf of themselves, their
3 current and future heirs, executors, administrators, successors, attorneys, insurers,
4 agents, representatives, and assigns, and any person they represent, shall, with
5 respect to each and every Settled Claim, release and forever relinquish and
6 discharge, and shall forever be enjoined from prosecuting, all Settled Claims and
7 any and all claims arising out of, relating to, or in connection with the Settlement,
8 the Litigation, or the resolution of the Litigation against the Released Parties,
9 whether or not such Settlement Class Member executes and delivers the Proof of
10 Claim and Release, except claims to enforce any of the terms of this Stipulation.
11 Further, all Settlement Class Members on behalf of themselves, their current and
12 future heirs, executors, administrators, successors, attorneys, insurers, agents,
13 representatives, and assigns, expressly covenant not to assert any claim or action
14 against any of the Released Parties that: (i) arises out of or relates to the purchase
15 or sale of Radient securities, or (ii) that could have been alleged, asserted, or
16 contended in any forum by the Settlement Class Members or any of them against
17 any of the Released Parties, arising out of or relating to the purchase or sale of
18 Radient securities, and shall forever be enjoined from commencing, instituting, or
19 prosecuting any such claim, so long as such claim relates to the purchase or sale
20 of Radient securities.

21 3. The Proof of Claim and Release to be executed by the Settlement
22 Class Members shall be substantially in the form and content contained in Exhibit
23 A-3 to the Preliminary Approval Order attached hereto as Exhibit A.

24 4. Pursuant to the Order and Final Judgment, upon the Effective Date
25 of this Settlement, Defendants shall release and forever discharge each and every
26 one of the Settled Defendants' Claims, and shall forever be enjoined from
27 prosecuting the Settled Defendants' Claims as against any of the Lead Plaintiffs,

1 Settlement Class Members, or their attorneys, including but not limited to claims
2 for malicious prosecution or sanctions.

3 **C. THE SETTLEMENT CONSIDERATION**

4 1. Subject to the terms of this Stipulation, the sum of \$2,500,000 (Two
5 Million Five Hundred Thousand Dollars) shall be paid into the Escrow Account
6 within fifteen (15) business days after the Court issues the Preliminary Approval
7 Order. That payment shall constitute the Settlement Amount. The Settlement
8 Amount shall be paid exclusively by the Radient Defendants.

9 2. The Gross Settlement Fund, net of any Taxes (as defined below) on
10 the income thereof and any Tax Expenses (as defined below), shall be used to
11 pay: (i) the Notice and Administration Expenses as authorized by this Stipulation;
12 (ii) Attorneys' Fees and Expenses authorized by the Court; (iii) any Award to
13 Lead Plaintiffs authorized by the Court; and (iv) other fees and expenses
14 authorized by the Court. The balance of the Gross Settlement Fund remaining
15 after the above payments shall be the Net Settlement Fund, which shall be
16 distributed to the Authorized Claimants in accordance with this Stipulation.

17 3. Any sums required to be held in escrow hereunder shall be held by
18 the Escrow Agent for the benefit of the Lead Plaintiffs and the Settlement Class
19 until the Effective Date. Until the date the Order and Final Judgment is entered,
20 all payments made from the Settlement Fund, except Notice and Administration
21 Expenses, shall require the signature of an authorized representative of both the
22 Escrow Agent and Defendants' counsel. After the Order and Final Judgment is
23 entered, payments made from the Settlement Fund shall require only the
24 signature of an authorized representative of the Escrow Agent and shall not
25 require the signature of Defendants' counsel's authorized representative. All
26 funds held by the Escrow Agent shall be deemed to be in custodia legis and shall
27 remain subject to the jurisdiction of the Court until such time as the funds shall
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1 be distributed or returned pursuant to this Stipulation and/or further order of the
2 Court. Other than amounts disbursed for providing notice to the Settlement
3 Class, customary administration costs, and Taxes and Tax Expenses, and the
4 Attorneys Fee and Expenses (which shall be paid to Lead Plaintiffs' Counsel
5 within two business days after the Court executes an order awarding such fees
6 and expenses), the Settlement Fund shall not be distributed until the Effective
7 Date. The Escrow Agent shall not disburse the Gross Settlement Fund, or any
8 portion thereof, except as provided in this Stipulation, or upon Order of the
9 Court.

10 4. The Escrow Agent may invest any funds in excess of \$150,000 in
11 short-term United States Treasury Securities (or a mutual fund invested solely in
12 such instruments), and shall collect and reinvest all interest accrued thereon. Any
13 funds held in escrow in an amount of less than \$150,000 may be held in a bank
14 account insured to the extent possible by the FDIC. Interest earned on the money
15 deposited into the Escrow Account shall be part of the Gross Settlement Fund.

16 5. The Notice and Administration Expenses shall be paid from the
17 Gross Settlement Fund. In order to pay Notice and Administration Expenses,
18 \$100,000 designated from the Gross Settlement Fund upon the entry of the
19 Preliminary Approval Order. Any monies from the Notice and Administration
20 Fund that remain after administration shall be returned to the Net Settlement
21 Fund. The Notice and Administration Account may be drawn upon by Lead
22 Plaintiffs' Counsel for Notice and Administration Expenses without further Court
23 approval. The Notice and Administration Account shall be administered solely
24 by the Escrow Agent. Any taxes or other expenses incurred in connection with
25 the Notice and Administration Account shall be paid from the Notice and
26 Administration Account or from the remainder of the Gross Settlement Fund.
27 The Released Parties shall not have any obligation for payment of taxes or other
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1 expenses associated with the Notice and Administration Account. Notice and
2 Administration Expenses in excess of \$100,000 shall not be paid out of the Gross
3 Settlement Fund until after the Effective Date. In no event shall an amount more
4 than the Settlement Amount be paid for Notice and Administration Expenses, and
5 in no event shall the Released Parties be responsible to pay any amount for
6 Notice and Administration Expenses.

7 6. The Settling Defendants shall have access to all records of the
8 Escrow Account, and upon request made to the Escrow Agent, shall receive
9 copies of all records of disbursements, deposits, and statements of accounts.

10 7. After the Effective Date, the Released Parties shall have no interest
11 in the Gross Settlement Fund or in the Net Settlement Fund. The Released
12 Parties shall not be liable for the loss of any portion of the Settlement Fund, nor
13 have any liability, obligation, or responsibility for the payment of claims, taxes,
14 legal fees, or any other expenses payable from the Gross Settlement Fund.

15 **D. ADMINISTRATION AND CALCULATION OF CLAIMS, FINAL
16 AWARDS, AND DISTRIBUTION OF NET SETTLEMENT FUND**

17 1. The Claims Administrator shall administer and calculate the claims
18 that shall be allowed and oversee distribution of the Net Settlement Fund, under
19 the supervision of Lead Plaintiffs' Counsel, and subject to appeal to, and
20 jurisdiction of, the Court. The Released Parties shall have no liability, obligation,
21 or responsibility for the administration of the Gross Settlement Fund or Net
22 Settlement Fund, or for the distribution of the Net Settlement Fund.

23 2. Except as otherwise provided below, on and after the Effective Date,
24 the Gross Settlement Fund shall be applied as follows:

25 a. To the extent not paid from the Notice and Administration
26 Account, to pay following an order of the Court approving any such
27 payment, the expenses incurred in connection with providing notice to
28 Settlement Class Members, administering and distributing the Net

1 Settlement Fund to Settlement Class Members, processing Proofs of Claim,
2 processing requests for exclusion, escrow fees and costs, and any
3 applicable taxes;

4 b. Subject to the approval and further order(s) of the Court, the
5 Net Settlement Fund shall be allocated to Authorized Claimants as set forth
6 in paragraph F. below.

7 c. After the Claims Administrator calculates the recognized
8 losses of each Authorized Claimant, Lead Plaintiffs' Counsel shall file a
9 motion for distribution of the Settlement Fund with the Court listing each
10 Authorized Claimant, the amount of each claim that Lead Plaintiffs'
11 Counsel believes should be allocated and distributed to each such
12 Authorized Claimant, accounting for all Notice and Administration
13 Expenses, and requesting Court approval to distribute the Settlement Fund
14 to the Authorized Claimants and pay any further Notice and
15 Administration expenses.

16 3. Each Settlement Class Member wishing to participate in the
17 Settlement shall be required to submit a Proof of Claim and Release (in
18 substantially the form set forth in Exhibit A-3 hereto, which inter alia releases all
19 Settled Claims against all Released Parties), signed under penalty of perjury by
20 the beneficial owner(s) of the securities that are the subject of the Proof of Claim
21 and Release, or by someone with documented authority to sign for the beneficial
22 owners and supported by such documents as specified in the instructions
23 accompanying the Proof of Claim and Release.

24 4. All Proofs of Claim must be postmarked or received within the time
25 prescribed in the Preliminary Approval Order unless otherwise ordered by the
26 Court. Any Settlement Class Member who fails to submit a properly completed
27 Proof of Claim within such period as shall be authorized by the Court shall be

1 forever barred from receiving any payments pursuant to this Stipulation or from
2 the Net Settlement Fund (unless Lead Plaintiffs' Counsel in its discretion deems
3 such late filing to be a formal or technical defect, or unless by Order of the Court
4 a later submitted Proof of Claim by such Settlement Class Member is approved),
5 but will in all other respects be subject to the provisions of this Stipulation and
6 Order and Final Judgment, including, without limitation, the release of the Settled
7 Claims and dismissal of the Litigation. Provided that it is received before the
8 motion for the Settlement Class Distribution Order is filed, a Proof of Claim shall
9 be deemed to have been submitted when posted if received with a postmark
10 indicated on the envelope and if mailed by first-class mail and addressed in
11 accordance with the instructions thereon. In all other cases, the Proof of Claim
12 shall be deemed to have been submitted when actually received by the Claims
13 Administrator.

14 5. Each Proof of Claim shall be submitted to the Claims Administrator
15 who shall determine, under the supervision of Lead Plaintiffs' Counsel, in
16 accordance with this Stipulation and any applicable orders of the Court, the
17 extent, if any, to which each claim shall be allowed, subject to appeal to the
18 Court. No later than seven (7) days prior to disbursement of the Net Settlement
19 Fund, Lead Plaintiffs' Counsel shall provide the Settling Defendants with a list of
20 Proofs of Claim received by the Claims Administrator indicating which Proofs of
21 Claim have been allowed by the Claims Administrator.

22 6. Following notice to the Radient Defendants' counsel, Lead
23 Plaintiffs' Counsel shall have the right, but not the obligation, to waive what they
24 deem to be formal or technical defects in any Proofs of Claim filed, where doing
25 so is in the interest of achieving substantial justice.

26 7. Proofs of Claim that do not meet the filing requirements may be
27 rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall

1 communicate with the Claimant in order to remedy curable deficiencies in the
2 Proof of Claim submitted. The Claims Administrator, under the supervision of
3 Lead Plaintiffs' Counsel, shall notify in a timely fashion and in writing, all
4 Claimants whose Proofs of Claim they propose to reject in whole or in part,
5 setting forth the reasons thereof, and shall indicate in such notice that the
6 Claimant whose claims are to be rejected has the right to review by the Court if
7 the Claimant so desires and complies with the requirement of paragraph D.8.
8 below.

9 8. If any Claimant whose claim has been rejected in whole or in part
10 desires to contest such rejection, the Claimant must, within twenty (20) days after
11 the date of mailing of the notice required by paragraph D.7. above, serve upon the
12 Claims Administrator a notice and statement of reasons indicating the Claimant's
13 ground for contesting the rejection along with any supporting documentation, and
14 requesting a review thereof by the Court. If a dispute concerning a claim cannot
15 be otherwise resolved, Lead Plaintiffs' Counsel shall thereafter present the
16 request for review to the Court.

17 9. The administrative determination of the Claims Administrator
18 accepting and rejecting claims shall be presented to the Court, on notice to the
19 Settling Defendants' Counsel, for approval by the Court in the Settlement Class
20 Distribution Order.

21 10. Each Claimant shall be deemed to have submitted to the jurisdiction
22 of the Court with respect to the Claimant's claim, and the claim will be subject to
23 investigation and discovery under the Federal Rules of Civil Procedure, provided
24 that such investigation and discovery shall be limited to that Claimant's status as
25 a Settlement Class Member and the validity and amount of the Claimant's claim.
26 No discovery shall be allowed on the merits of the Litigation or Settlement in
27 connection with processing of the Proofs of Claim.

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1 11. Payment pursuant to this Stipulation shall be deemed final and
2 conclusive against all Settlement Class Members. All Settlement Class Members
3 whose claims are not approved by the Court shall be barred from participating in
4 distributions from the Net Settlement Fund, but are otherwise bound by all of the
5 terms of the Order and Final Judgment to be entered in the Litigation and the
6 releases provided for herein, and will be barred from bringing any action against
7 the Released Parties arising out of or relating to the Settled Claims.

8 12. All proceedings with respect to the administration, processing, and
9 determination of claims described by this paragraph of this Stipulation and the
10 determination of all controversies relating thereto, including disputed questions
11 of law and fact with respect to the validity of claims, shall be subject to the
12 jurisdiction of the Court.

13 13. The Net Settlement Fund shall be distributed to Authorized
14 Claimants by the Claims Administrator upon application to the Court by Lead
15 Plaintiffs' Counsel for a Settlement Class Distribution Order only after all of the
16 following having occurred: (i) the Effective Date; (ii) all claims have been
17 processed, and all Claimants whose claims have been rejected or disallowed, in
18 whole or in part, have been notified and provided the opportunity to be heard
19 concerning such rejection or disallowance; (iii) all objections with respect to all
20 rejected or disallowed claims have been resolved by the Court, and all appeals
21 therefrom have been resolved or the time therefor has expired; (iv) all matters
22 with respect to Attorneys' Fees and Expenses, costs, and disbursements have been
23 resolved by the Court, and all appeals therefrom have been resolved or the time
24 therefor has expired; and (v) all costs of administration have been paid.

25 14. If any funds remain in the Net Settlement Fund by reason of
26 uncashed checks or otherwise, then, after the Claims Administrator has made
27 reasonable and diligent efforts to have Settlement Class Members who are

1 entitled to participate in the distribution of the Net Settlement Fund cash their
2 distribution checks, any balance remaining in the Net Settlement Fund one (1)
3 year after the initial distribution of such funds shall be re-distributed, after
4 payment of any unpaid costs or fees incurred in administering the Net Settlement
5 Fund for such re-distribution, to Settlement Class Members who have cashed
6 their checks and who would receive at least \$10.00 from such re-distribution. If
7 any funds shall remain in the Net Settlement Fund six months after such re-
8 distribution, then such balance shall be contributed to the Legal Aid Society of
9 Orange County, or any not-for-profit successor of it.

10 15. Before the Effective Date, Lead Plaintiffs' Counsel shall file with the
11 Court a declaration under penalty of perjury describing how notice of the
12 Settlement was given to the Settlement Class and listing the names and addresses
13 of all persons to whom individual notice of the Settlement was mailed.

14 **E. TAX TREATMENT**

15 1. The Parties agree to treat the Gross Settlement Fund as being at all
16 times a qualified settlement fund within the meaning of Treasury Regulation §
17 1.468B-1 and Section 468B of the Internal Revenue Code, as amended, for the
18 taxable years of the Gross Settlement Fund, beginning with the date it is created.
19 In addition, the Escrow Agent and, as required, the Settling Parties, shall jointly
20 and timely make such elections as are necessary or advisable to carry out the
21 provisions of this paragraph, including the "relation-back election" (as defined in
22 Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections
23 shall be made in compliance with the procedures and requirements contained in
24 such regulations. It shall be the responsibility of Lead Plaintiffs' Counsel to
25 timely and properly prepare and deliver the necessary documentation for
26 signature by all necessary parties, and thereafter to cause the appropriate filing to
27 occur.

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1 2. For purposes of Section 468B of the Internal Revenue Code, as
2 amended, and the regulations promulgated thereunder, the "administrator" shall
3 be Lead Plaintiffs' Counsel. Lead Plaintiffs' Counsel shall timely and properly
4 file all tax returns necessary or advisable with respect to the Gross Settlement
5 Fund, and make all required tax payments, including deposits of estimated tax
6 payments in accordance with Treas. Reg. § 1.468B-2(k). Such returns (as well as
7 the election described in paragraph E.1. hereof) shall be consistent with this
8 paragraph and reflect that all taxes (including any interest or penalties) on the
9 income earned by the Gross Settlement Fund shall be paid out of the Gross
10 Settlement Fund as provided in paragraph E.3. hereof.

11 3. All (i) taxes (including any interest or penalties) arising with respect
12 to the income earned by the Gross Settlement Fund, including any taxes or tax
13 detriments that may be imposed upon the Settling Defendants with respect to any
14 income earned by the Gross Settlement Fund for any period during which the
15 Gross Settlement Fund does not qualify as a qualified settlement fund for Federal
16 or state income tax purposes ("Taxes"); and (ii) expenses and costs incurred in
17 connection with the operation and implementation of this paragraph (including,
18 without limitation, expenses of tax attorneys and/or accountants, and mailing and
19 distribution costs and expenses relating to filing (or failing to file) the returns
20 described in this paragraph) ("Tax Expenses"), shall be paid out of the Gross
21 Settlement Fund. In all events, the Released Parties shall have no liability for
22 Taxes or the Tax Expenses, and Lead Plaintiffs and Lead Plaintiffs' Counsel
23 agree to indemnify and hold the Released Parties harmless for Taxes and Tax
24 Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered
25 to be, a cost of administration of the Settlement and shall be timely paid by the
26 Escrow Agent out of the Gross Settlement Fund without prior order from the
27 Court. The Escrow Agent shall be obligated (notwithstanding anything herein to
28

1 the contrary) to withhold from distribution to the Settlement Class Members any
2 funds necessary to pay such Taxes and Tax Expenses, including the
3 establishment of adequate reserves for any Taxes and Tax Expenses (as well as
4 any amounts that may be required to be withheld under Treas. Reg. § 1468B-
5 2(l)(2)). The Released Parties shall have no responsibility or liability therefor.
6 The Settling Parties hereto agree to cooperate with the Escrow Agent, each other,
7 and their tax attorneys and accountants to the extent reasonably necessary to
8 carry out the provisions of this paragraph.

9 **F. ALLOCATION OF NET SETTLEMENT FUND**

10 1. The Plan of Allocation is based upon Lead Plaintiffs' Counsel's
11 assessment of the merits and the relative strengths and weaknesses, including
12 recoverable damages, of the claims of the Settlement Class Members.

13 2. The Settling Defendants do not and shall not take any position as to
14 the proposed Plan of Allocation.

15 3. The Released Parties shall have no responsibility for and no
16 obligations or liabilities of any kind whatsoever in connection with the
17 determination, administration, calculation, or payment of claims to Settlement
18 Class Members.

19 4. The Settling Defendants shall have no involvement in the
20 solicitation of, or review of Proofs of Claim, or involvement in the administration
21 process itself, which shall be conducted by the Claims Administrator in
22 accordance with this Stipulation and the Order and Final Judgment to be entered
23 by the Court. No Claimant or Authorized Claimant shall have any claim against
24 the Released Parties or their counsel based on, or in any way relating to, the
25 distributions from either the Gross Settlement Fund or the Net Settlement Fund.

26 5. No Authorized Claimant shall have any claim against Lead
27 Plaintiffs' Counsel or the Claims Administrator based on, or in any way relating

1 to, the distributions from the Net Settlement Fund that have been made
2 substantially in accordance with this Stipulation and any applicable orders of the
3 Court.

4 6. Any change in the allocation of the Net Settlement Fund ordered by
5 the Court shall not affect the validity or finality of this Settlement.

6 **G. OBLIGATIONS OF AND LIMITATIONS OF LIABILITY OF
7 ESCROW AGENT**

8 1. The Escrow Agent shall not be responsible for the payment of any
9 sums due to Authorized Claimants or other Persons, except to the extent of
10 maintaining account of and properly paying sums as required by this Stipulation
11 to the limited extent that such sums have been delivered into the Escrow Account
12 or Notice and Administration Account as required by this Stipulation. The
13 Escrow Agent shall be liable only for acts of gross negligence or willful
14 misconduct.

15 **H. LEAD PLAINTIFFS' COUNSEL'S REQUEST FOR AN AWARD OF
16 ATTORNEYS' FEES AND EXPENSES**

17 1. Lead Plaintiffs' Counsel intends to submit an application to the
18 Court, on notice to counsel for the Settling Defendants, for the payment of
19 Attorneys' Fees and Expenses, including: (i) an award of attorneys' fees up to
20 one-third of the Settlement Amount; (ii) reimbursement of litigation costs and
21 expenses, plus interest, including fees and expenses of experts, incurred in
22 connection with the prosecution of the Litigation; and (iii) an Award to Lead
23 Plaintiffs (for reimbursement of time and expenses).

24 2. Any attorneys' fees and costs and Award to Lead Plaintiffs awarded
25 by the Court shall be paid from the Gross Settlement Fund within two business
26 days after the Court executes an order awarding such fees and expenses. Lead
27 Plaintiffs' Counsel may thereafter allocate the attorneys' fees among other
28 Plaintiffs' counsel in a manner in which Lead Plaintiffs' Counsel in good faith

1 believe reflects the contributions of such counsel to the initiation, prosecution,
2 and resolution of the Litigation. If, and when, as a result of any appeal and/or
3 further proceedings on remand, or successful collateral attack, the Attorneys' Fee
4 and Expense award is overturned or lowered, or if the settlement is terminated or
5 is not approved by the Court, or if there is an appeal and any order approving the
6 settlement does not become final and binding upon the Class, then, within five (5)
7 business days from receiving notice from Defendants' counsel or from a court of
8 appropriate jurisdiction, Lead Plaintiffs' Counsel shall refund to the Settlement
9 Fund such fees and expenses previously paid to them from the Settlement Fund
10 plus interest thereon at the same rate as earned on the Settlement Fund in an
11 amount consistent with such reversal or modification. Each such Plaintiffs'
12 counsel's law firm receiving fees and expenses, as a condition of receiving such
13 fees and expenses, on behalf of itself and each partner and/or shareholder of it,
14 agrees that the law firm and its partners and/or shareholders are subject to the
15 jurisdiction of the Court for the purpose of enforcing the provisions of this
16 paragraph.

17 3. Lead Plaintiffs' Counsel waives the right to make an additional
18 application or applications for payment from the Gross Settlement Fund for fees
19 and expenses incurred after the Settlement Hearing. The other Settling Parties
20 shall take no position on any application concerning Lead Plaintiffs' Counsel's
21 request or award of attorneys' fees and reimbursement of expenses, or Award to
22 Lead Plaintiffs.

23 4. It is agreed that the procedure for and the allowance or disallowance
24 by the Court of any applications by Lead Plaintiffs' Counsel for Attorneys' Fees
25 and Expenses, including fees for experts and consultants to be paid out of the
26 Gross Settlement Fund, and any order or proceeding relating thereto, shall not
27 operate to terminate or cancel this Stipulation or affect its finality, and shall have
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1 no effect on the terms of this Stipulation or on the enforceability of this
2 Settlement.

3 **I. THE PRELIMINARY APPROVAL ORDER**

4 1. Promptly after execution of this Stipulation, the Settling Defendants
5 and Lead Plaintiffs shall submit the Stipulation together with its exhibits to the
6 Court and shall jointly apply for entry of a Preliminary Approval Order in
7 connection with settlement proceedings substantially in the form annexed hereto
8 as Exhibit A, providing for, among other things, preliminary approval of the
9 Settlement and notice to the Settlement Class of the Settlement Hearing. The
10 Preliminary Approval Order (Exhibit A hereto) to be submitted to the Court shall
11 contain exhibits substantially in the form set forth in: (i) the Notice of Pendency
12 and Settlement of Class Action (the "Notice") (Exhibit A-1 to the Preliminary
13 Approval Order); (ii) the Summary Notice of Pendency and Settlement of Class
14 Action ("Summary Notice") (Exhibit A-2 to the Preliminary Approval Order);
15 and (iii) the Proof of Claim and Release (Exhibit A-3 to the Preliminary Approval
16 Order).

17 2. The Released Parties are not liable or responsible for the method of,
18 or representations made in, the Notice or the Summary Notice.

19 **J. ORDER AND FINAL JUDGMENT TO BE ENTERED BY THE
20 COURT APPROVING THE SETTLEMENT**

21 1. The Settling Defendants and Lead Plaintiffs shall seek to have the
22 Court enter an Order and Final Judgment substantially in the form of Exhibit B
23 hereto.

24 **K. CONDITIONS OF SETTLEMENT**

25 1. The Effective Date of the Settlement shall be conditioned upon the
26 occurrence of ALL of the following events:

- 1 a. The Court shall enter the Preliminary Approval Order in all
2 material respects, as required by paragraph I. above;
- 3 b. No party shall have exercised within the required time period
4 any right to terminate the Settlement as permitted by paragraph L. below;
- 5 c. The Court shall enter the Order and Final Judgment in all
6 material respects, as required by paragraph J. above;
- 7 d. The Court's Order and Final Judgment, substantially in the
8 form of Exhibit B, shall have become "Final," as defined in paragraph
9 A.17.; and
- 10 e. The sum of \$2,500,000 (Two Million Five Hundred Thousand
11 Dollars) shall have been paid, as set forth in paragraph C.1. above.

12 2. Upon occurrence of ALL of the events referenced in paragraph K.1.
13 above, Lead Plaintiffs shall have, and each and all of the members of the
14 Settlement Class shall hereby be deemed to have, and by operation of the Order
15 and Final Judgment shall have, fully, finally, and forever, released, settled, and
16 discharged, in accordance with the terms of paragraph B. above, the Released
17 Parties from and with respect to the Settled Claims, whether or not such members
18 of the Settlement Class execute and deliver a Proof of Claim.

19 3. Upon occurrence of ALL of the events referenced in paragraph K.1.
20 above, the obligation of the Escrow Agent to return funds from the Gross
21 Settlement Fund to the Radient Defendants pursuant to paragraph L.4. or any
22 other provision hereof shall be absolutely and forever extinguished.

23 **L. RIGHTS OF TERMINATION AND EFFECTS THEREOF**

24 1. The Settling Defendants and Lead Plaintiffs shall each have the right
25 to terminate the Settlement and this Stipulation by providing written notice of
26 their election to do so ("Termination Notice") to all other counsel of the Settling

1 Parties within thirty (30) days after the date on which any of the following
2 occurs:

- 3 a. the Court issues an order declining to enter the Preliminary
4 Approval Order in any material respect;
- 5 b. the Court issues an order declining to approve this Stipulation
6 or any material part of it;
- 7 c. the Court declines to enter the Order and Final Judgment in all
8 material respects as required by paragraph J. above;
- 9 d. the Order and Final Judgment is modified or reversed in any
10 material respect by a Court of Appeals or the United States Supreme Court;
11 or
- 12 e. in the event that the Court enters an order and final judgment
13 in a form other than that provided above (an "Alternative Judgment") and
14 none of the Settling Parties elects to terminate this Settlement, the date that
15 such Alternative Judgment is modified or reversed in any material respect
16 by a Court of Appeals or the Supreme Court.

17 2. If prior to the Settlement Hearing, (i) Persons who otherwise would
18 be Settlement Class Members have filed with the Court valid and timely requests
19 for exclusion ("Requests for Exclusion") from the Settlement Class in accordance
20 with the provisions of the Preliminary Approval Order and the notice given
21 pursuant thereto, and such Persons in the aggregate purchased stock during the
22 Settlement Class Period in an amount greater than the amounts specified in a
23 separate Supplemental Agreement between the parties (the "Supplemental
24 Agreement"), or (ii) Persons file lawsuits alleging fraud in connection with the
25 purchase of more than the number of Radient shares specified in the
26 Supplemental Agreement, then the Settling Defendants and Lead Plaintiffs each
27 shall have the option to terminate this Stipulation and Settlement in strict
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1 accordance with the requirements and procedures set forth in the Supplemental
2 Agreement ("Opt-out Termination Option"). The Supplemental Agreement shall
3 not be filed with the Court unless and until a dispute among the parties
4 concerning its interpretation or application arises. Copies of all Requests for
5 Exclusion received, together with copies of all written revocations of Requests
6 for Exclusion, shall be delivered to the Settling Defendants no later than fourteen
7 (14) days prior to the Settlement Hearing. The required procedure for and
8 consequences of exercising an Opt-out Termination Option are as follows:

9 a. To exercise the Opt-out Termination Option, a Settling
10 Defendant or Lead Plaintiff must serve written notice, signed by the party's
11 respective counsel, upon counsel for the other Settling Parties, not less than
12 seven (7) days before the Settlement Hearing;

13 b. If a Settling Defendant or Lead Plaintiff exercises the Optout
14 Termination Option as provided herein, this Stipulation shall be null and
15 void, and the provisions of paragraph L. hereof shall apply.

16 3. If the Settlement Amount payable pursuant to paragraph C.1. of this
17 Stipulation is not paid, then the Lead Plaintiffs, in their sole discretion, may elect,
18 at any time prior to the Court's entering the Order and Final Judgment, (a) to
19 terminate the Settlement by providing written notice to the Settling Parties; or (b)
20 to enforce the terms of the Settlement and this Stipulation and seek a judgment
21 effecting the terms herein.

22 4. Upon termination of the Stipulation pursuant to the terms of the
23 Stipulation, the Escrow Agent shall refund the Gross Settlement Fund, less
24 amounts already expended for notice to the Settlement Class pursuant to the
25 terms of the Stipulation, to the Radient Defendants within ten (10) business days
26 thereafter (the "Returned Settlement Amount").

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1 5. If this Stipulation is terminated pursuant to its terms, and at the
2 request of any Settling Defendant or Lead Plaintiff, the Escrow Agent or his
3 designee shall apply for any tax refund owed to the Gross Settlement Fund and
4 pay the percentage of the proceeds of the tax refund, after deduction of any fees
5 and expenses incurred in connection with such application(s) for refund, to the
6 Radient Defendants.

7 6. If this Stipulation is terminated pursuant to its terms, all of the
8 Settling Parties shall be deemed to have reverted to their respective status prior to
9 the execution of this Stipulation, and they shall proceed in all respects as if this
10 Stipulation had not been executed and the related orders had not been entered,
11 preserving in that event all of their respective claims and defenses in the
12 Litigation, and shall revert to their respective positions in the Litigation, except
13 that the provisions of paragraphs E.1-3., G, L.4-7., M.10-11., and M.13. shall
14 survive termination.

15 7. No order of the Court or modification or reversal of any order of the
16 Court concerning the Plan of Allocation or the amount of any attorneys' fees,
17 costs, and expenses awarded by the Court shall constitute grounds for
18 cancellation or termination of the Stipulation.

19 | M. MISCELLANEOUS PROVISIONS

20 1. The Settling Parties: (a) acknowledge that it is their intent to
21 consummate the Settlement contemplated by this Stipulation; (b) agree to
22 cooperate to the extent necessary to effectuate and implement all terms and
23 conditions of this Stipulation; and (c) agree to exercise their best efforts and to
24 act in good faith to accomplish the foregoing terms and conditions of the
25 Stipulation.

26 ||| 2. The Settling Parties acknowledge and warrant as follows:

1 a. By executing this Stipulation, each of the Settling Parties
2 represents that they have carefully read and fully understand this
3 Stipulation and its final and binding effect;

4 b. By executing this Stipulation, each of the Settling Parties
5 represents that they have the right, legal capacity, power and authority to
6 enter into this Stipulation and to perform their obligations hereunder,
7 without the consent, approval, or authorization of any person, board, entity,
8 tribunal, or other regulatory or governmental authority;

9 c. By executing this Stipulation, each of the Settling Parties
10 represents that the execution and delivery of this Stipulation and the
11 performance of each and every obligation in this Stipulation do not and
12 will not result in a breach of or constitute a default under, or require any
13 consent under, any duty, relationship, contract, agreement, covenant,
14 promise, guarantee, obligation or instrument to which the executing
15 Settling Party is a party or by which the executing Settling Party is bound
16 or affected.

17 d. By executing this Stipulation, each of the Settling Parties
18 represents that there is no demand for monetary, non-monetary, or
19 injunctive relief, or any civil, criminal, administrative, or arbitration
20 proceeding for monetary, non-monetary, or injunctive relief known or
21 suspected to exist against them that would affect this Stipulation or their
22 ability to enter into, execute or perform each and every obligation in this
23 Stipulation.

24 e. By executing this Stipulation, each of the Settling Parties
25 represents that no representations or promises of any kind or character
26 have been made by any other Settling Party, Released Party, or anyone else

1 to induce the execution of this Stipulation except as expressly provided
2 herein.

3 f. By executing this Stipulation, each of the Settling Parties
4 represents that this Stipulation is fair and is executed voluntarily, with full
5 knowledge of the consequences and implications of the obligations
6 contained herein.

7 g. By executing this Stipulation, each of the Settling Parties
8 represents that this Stipulation is not the result of any fraud, duress, or
9 undue influence, and that they have not assigned, transferred, or conveyed
10 or purported to assign, transfer, or convey, voluntarily, involuntarily or by
11 operation of law, any or all of their respective rights and claims.

12 h. By executing this Stipulation, each of the Settling Parties
13 represents that they have had the opportunity to be represented by counsel
14 of their choice that is duly licensed to practice in the State of California
15 throughout the negotiations which preceded the execution of this
16 Stipulation and in connection with the preparation and execution of this
17 Stipulation.

18 i. By executing this Stipulation, each of the Settling Parties
19 represents that they have been afforded sufficient time and opportunity to
20 review this Stipulation with advisors and counsel of their choice.

21 3. All of the exhibits attached hereto are hereby incorporated by
22 reference as though fully set forth herein.

23 4. No amendment or modification of this Stipulation shall be effective
24 unless in writing and signed by the Settling Parties or their successors-in-interest.

25 5. This Stipulation, and the exhibits attached hereto, constitute the
26 entire agreement among the Settling Parties, and no representations, warranties,
27 or inducements have been made to any Settling Party concerning this Stipulation

1 or its exhibits, other than the representations, warranties, and covenants contained
2 and memorialized in such documents.

3 6. Except as otherwise provided herein, each Settling Party shall bear
4 its own costs. Lead Plaintiffs' Counsel's Attorneys' Fees and Expenses, subject to
5 Court approval, shall be paid only out of the Gross Settlement Fund, and the
6 Released Parties shall have no obligation with respect to the payment of said
7 Attorneys' Fees and Expenses.

8 7. Lead Plaintiffs' Counsel, on behalf of the Settlement Class, is
9 expressly authorized to take all appropriate action required or permitted to be
10 taken by the Settlement Class pursuant to this Stipulation to effectuate its terms
11 and is also expressly authorized to enter into any modifications or amendments to
12 this Stipulation on behalf of the Settlement Class.

13 8. The persons signing this Stipulation represent that they are
14 authorized to do so on behalf of their respective clients.

15 9. This Stipulation may be executed in one or more original,
16 photocopied, or facsimile counterparts. All executed counterparts and each of
17 them shall be deemed to be one and the same instrument. The Settling Parties
18 shall exchange among themselves original signed counterparts of this Stipulation,
19 and a complete set of executed counterparts of this Stipulation shall be filed with
20 the Court.

21 10. This Stipulation shall be binding upon, and inure to the benefit of,
22 the successors, assigns, executors, administrators, heirs, and legal representatives
23 of the Settling Parties. No assignment shall relieve any party hereto of any
24 obligations hereunder.

25 11. All terms of this Stipulation and all exhibits hereto shall be governed
26 and interpreted according to the laws of the State of California without regard to
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1 its rules of conflicts of law, except to the extent that federal law requires that
2 federal law governs, and in accordance with the laws of the United States.

3 12. The Lead Plaintiffs, on behalf of themselves and each member of the
4 Settlement Class, and the other Settling Parties hereby irrevocably submit to the
5 jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of
6 or relating to this Stipulation, the applicability of this Stipulation, or the
7 enforcement of this Stipulation. The administration and consummation of the
8 Settlement as embodied in this Stipulation shall be under the authority of the
9 Court, and the Court shall retain jurisdiction for the purpose of entering orders
10 providing for awards of Attorneys' Fees and Expenses to Lead Plaintiffs'
11 Counsel, Awards to Lead Plaintiffs, and enforcing the terms of this Stipulation.

12 13. None of the Settling Parties shall be considered to be the drafter of
13 this Stipulation or any provision hereof for purposes of any statute, case law, or
14 rule of interpretation or construction that would or might cause any provision to
15 be construed against the drafter hereof. Because of the arm's-length negotiations
16 that preceded the execution of this Stipulation, all Settling Parties have
17 contributed substantially and materially to the preparation of this Stipulation.

18 14. Neither this Stipulation, nor the fact of the Settlement, is an
19 admission or concession by any Settling Defendant of any liability or
20 wrongdoing whatsoever. This Stipulation shall not constitute a finding of the
21 validity or invalidity of any claims in the Litigation or of any wrongdoing by any
22 Defendant named therein. This Stipulation, the fact of settlement, the settlement
23 proceedings, the settlement negotiations, and any related documents, shall not be
24 used or construed as an admission of any fault, liability, or wrongdoing by any
25 person or entity.

26 a. The Settling Parties intend the Settlement to be a final and
27 complete resolution of all claims and disputes asserted or that could be
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1 asserted by the Settlement Class Members against the Released Parties
2 with respect to the Settled Claims. Accordingly, unless the Court's Order
3 and Final Judgment approving the Settlement does not become Final, the
4 Settling Parties agree not to assert in any forum that the Litigation was
5 brought by Lead Plaintiffs or defended by the Settling Defendants in bad
6 faith or without a reasonable basis. Additionally, the Settling Parties shall
7 not assert any claims of any violation of Rule 11 of the Federal Rules of
8 Civil Procedure relating to the prosecution, defense, or settlement of the
9 Litigation. The Settling Parties agree that the amount paid and the other
10 terms of the Settlement were negotiated at arm's-length in good faith by the
11 Settling Parties, and reflect a settlement that was reached voluntarily after
12 consultation with experienced legal counsel.

13 b. The headings in this Stipulation are used for purposes of
14 convenience and ease of reference only and are not meant to have any legal
15 effect, nor are they intended to influence the construction of this
16 Stipulation in any way.

17 c. The waiver of one Settling Party of any breach of this
18 Stipulation by any other Settling Party shall not be deemed a waiver of any
19 other breach of this Stipulation. The provisions of this Stipulation may not
20 be waived except by a writing signed by the affected Settling Party or
21 counsel for that Settling Party. No failure or delay on the part of any
22 Settling Party in exercising any right, remedy, power, or privilege under
23 this Stipulation shall operate as a waiver thereof or of any other right,
24 remedy, power, or privilege of such Settling Party under this Stipulation;
25 nor shall any single or partial exercise of any right, remedy, power, or
26 privilege under this Stipulation on the part of any Settling Party operate as
27 a waiver thereof or of any other right, remedy, power, or privilege of such
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1 Settling Party under this Stipulation, or preclude further exercise thereof or
2 the exercise of any other right, remedy, power, or privilege.

3 15. The Settling Parties agree that nothing contained in this Stipulation
4 shall cause any Settling Party to be the agent or legal representative of another
5 Settling Party for any purpose whatsoever, nor shall this Stipulation be deemed to
6 create any form of business organization between the Settling Parties, nor is any
7 Settling Party granted any right or authority to assume or create any obligation or
8 responsibility on behalf of any other Settling Party, nor shall any Settling Party
9 be in any way liable for any debt of another Settling Party as a result of this
10 Stipulation except as explicitly set forth herein.

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1 IN WITNESS WHEREOF, the Settling Parties hereto, intending to be legally
2 bound hereby, have caused this Stipulation to be executed, by their duly
3 authorized attorneys, as of the day and year first above written.
4

5 **THE ROSEN LAW FIRM, P.A.**

6 

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